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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,740	11/12/2003	J. Lyle Einstein JR.	38949/280375	7545
23370	7590	02/23/2006	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			WILLATT, STEPHANIE L	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/706,740	EINSTEIN ET AL.
	Examiner	Art Unit
	Stephanie L. Willatt	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 November 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 4-5 of claim 1 recite that a spool of dental floss is mounted for rotation "on the cylindrical protrusion." There is no antecedent basis for this limitation. Furthermore, this limitation could be confused with the protrusion recited in line 2 of claim 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 4-8, 10-14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chari (US 5,076,302) in view of Sanchez Cordero (US 4,428,389).

Chari discloses a dental floss dispenser comprising a housing, as shown in Figure 5. The housing comprises an annular base and a protrusion (peripheral wall 213) forming a cavity dimensioned to receive the neck of a toothpaste tube, as shown in Figure 5. A spool of dental floss is mounted for rotation on a cylindrical protrusion (spindle 322), as shown in the embodiment of Figure 8. A cover (overcap top 328) is connected to the housing by a first hinge (346). The cover (overcap top 328) encloses the end of the housing opposite the cavity and comprises a notch (groove 326) and a cutting member (cutting edge 330) whereby the end of the dental floss is threaded through the notch (groove 326) for removal. A lid (cover 332) is attached to the housing by a second hinge and it can enclose cover (overcap top 328). The housing is attached to a toothpaste tube by threaded, annular wall that receives the top of the toothpaste tube, as shown in Figure 5. The housing is cylindrical, as shown in Figures 5 and 8. The cutting member (cutting edge 330) comprises a metal lance attached to the cover for cutting the dental floss. A lip extends from the lid (cover 332) to facilitate opening of the lid (cover 332), as shown in Figure 8. The housing, cover (overcap top 328), and lid (cover 332) comprise plastic (column 3, lines 1-5).

The lid (cover 332) is hinged to the housing, rather than the cover (overcap top 328), as recited in claim 1. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lid of Chari attached to the cover, rather than the housing, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Kuhle*, 188 USPQ 7(CCPA 1975).

The housing is dimensioned to receive the neck of a toothpaste tube, rather than the cap of a toothpaste tube. In lines 60-67 of column 1, Sanchez Cordero teaches how dimensioning a dental floss dispenser to fit over a toothpaste cap by pressure, rather than threads, makes the floss dispenser capable of fitting over a variety of different sized caps of toothpaste tubes. This means that the floss dispenser can be retrofitted onto toothpaste caps of a variety of different brands of toothpaste tubes with differently dimensioned caps. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dimension the cavity of Chari's floss dispenser housing so that it can fit over a toothpaste cap, as taught by Sanchez Cordero, in order to make Chari's floss dispenser able to fit a variety of differently dimensioned toothpaste caps.

5. Claims 3, 9, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chari (US 5,076,302) in view of Sanchez Cordero (US 4,428,389) as applied to claims 1, 2, 4-8, 10-14, 16, and 17 above, and in further view of Jackson et al. (US 4,724,855).

Chari discloses the features discussed above, but does not disclose that the housing comprises two convex walls and two concave walls. Jackson et al. teach how making a container with two convex walls (20a, 20c) and two concave walls (20b, 20d) facilitates handling and gripping, as discussed in column 2, line 64 to column 3, line 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the housing of Chari with two convex walls and two

concave walls, as taught by Jackson et al., in order to facilitate handling and gripping of the housing.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mortvedt, Brennan, Paulson, and Grussmark disclose floss dispensers that attach to the end of toothpaste tubes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


slw


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